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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/727,682	12/04/2003	Terri Pickering	PIC.002.P	8463

7590 01/04/2005
David B. Waller
Suite 214
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EXAMINER

REESE, DAVID C

ART UNIT	PAPER NUMBER
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3677

DATE MAILED: 01/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/727,682

Applicant(s)

PICKERING, TERRI

Examiner

David C. Reese

Art Unit

3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of Claims

[1] Claims 1-11 are pending.

Drawings

[2] The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the flexible component of the cap, capable of expanding and retracting to receive said nipple of adapter when the two are pressed together as described from Claim 8; as well as the adhesive as described from Claim 6, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining

Art Unit: 3677

figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

[3] The disclosure is objected to because of the following informalities:

The abstract should remain free of technical terms such as "means", as the abstract should surmise the pertinent aspects of the invention while avoiding the use of claim terminology.

Appropriate correction is required.

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

Claim Objections

[4] Claim 9 is objected to because of the following informalities: terminology of "means for engaging" refers to the connection between the shaft and adapter. The Claim, however, details the connection between the cap and adapter, so thus, the claim should read as "means for affixing."

Appropriate correction is required.

Claim Rejections - 35 USC § 102

[5] The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Art Unit: 3677

[6] Claims 1-4, 7, and 10-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Biagi, 6,105,392.

Biagi teaches of an earring piercing and fastening systems and methods. As for Claim 1, Biagi teaches of an earring piercing and fastening system comprising:

(a) a shaft (291 in Fig. 7), said shaft being mounted on a base (right side adjacent to 291 in Fig. 7);

(b) a connector (27 in Fig. 7) having a cavity (276 in Fig. 7) with means for engaging said shaft (274 in Fig. 7) and an adapter on the obverse (272 in Fig. 7); and

(c) a cap (28 in Fig. 7) having a means for affixing to said adapter on one side (281 into 272 in Fig. 7) and a decorative aspect of the earring attached on the obverse (left side adjacent to 281 in Fig. 7).

As for Claim 2, Re: Claim 1, Biagi teaches of an earring piercing and fastening system wherein said shaft comprises or is made of a hypoallergenic material (Claim 7).

As for Claim 3, Re: Claim 1, Biagi teaches of an earring piercing and fastening system wherein said shaft is grooved (291 in Fig. 7) and wherein said means for engaging said shaft is threaded in said cavity able to receive said threaded shaft (276 receiving 291 in Fig. 7).

As for Claim 4, Re: Claim 1, Biagi teaches of an earring piercing and fastening system wherein said shaft is grooved (291 in Fig. 7) and wherein said

Art Unit: 3677

means for engaging said shaft are depressions (276 in Fig. 7) in said cavity that interlock with said grooved shaft (291 into 276 in Fig. 7).

As for Claim 7, Re: Claim 1, Biagi teaches of an earring piercing and fastening system wherein said means for affixing to said adapter is a clasping device (clasping device of 26 and 36 affixing to 281 and 381 in Figs. 7 and 8 respectively).

As for Claim 10, Biagi teaches of an earring piercing and fastening method comprising a shaft (291 in Fig. 7), said shaft having a base (right side adjacent to 291 in Fig. 7); a connector (27 in Fig. 7) having a cavity (276 in Fig. 7) with means for engaging said shaft (274 in Fig. 7) and an adapter on the obverse (272 in Fig. 7); and a cap (28 in Fig. 7) having a means for affixing said adapter on one side (281 into 272 in Fig. 7) and a decorative aspect of the earring attached on the obverse (left side adjacent to 281 in Fig. 7) comprising the step of:

(a) inserting said shaft through a pierced ear (105 in Fig. 9) having a front end (left side of 105 in Fig. 9) and a back (104 in Fig. 9) wherein said base is flush against said back of said ear (104 in Fig. 9) and said shaft protrudes from said front of said ear (105 in Fig. 9);

(b) affixing said connector onto said shaft by inserting said shaft into said cavity wherein said adapter is positioned away from said front of said ear (291 into 276 in Fig. 7); and

Art Unit: 3677

(c) affixing said cap to said adapter such that said decorative aspect is positioned away from said front of said ear (281 and 381 affixing to 26 and 36 in Figs. 7 and 8 respectively).

As for Claim 11, Biagi teaches of an earring piercing and fastening system comprising a plurality of shafts of different lengths (291 and 391 in Figs. 7 and 8 respectively), at least two connectors for engaging said plurality of shafts (26 and 36 in Figs. 7 and 8 respectively), each having an adapter (276 and 376 in Figs. 7 and 8 respectively), and a plurality of caps (281 and 381 in Figs. 7 and 8 respectively) for affixing to said connectors having a decorative aspect on the obverse (left side adjacent to 281 and 381 in Figs. 7 and 8).

[7] Claims 1 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Kogen, 5,743,113.

Kogen teaches of a pierced earlobe protector.

As for Claim 1, Kogen teaches of a pierced earlobe protector comprising:

(a) a shaft (22 in Fig. 2), said shaft being mounted on a base (26 in Fig. 2)

(b) a connector (30) having a cavity (38) with means for engaging said shaft (28 into 38) and an adapter on the obverse (44); and

(c) a cap (32) having a means for affixing to said adapter on one side (54) and a decorative aspect of the earring attached on the obverse (62).

As for Claim 9, Re: Claim 1, Kogen teaches of an pierced earlobe protector wherein said means for engaging (affixing) having a flat head extending perpendicularly from the obverse side of said connector (48); and said cap

Art Unit: 3677

having a keyhole-shaped slot capable of receiving said pin head (54 of cap receiving 46 in Fig. 1; notice how 46 fits into 54 with indentations on the top and bottom resembling a key-hole shape).

Claim Rejections - 35 USC § 103

[8] The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

[9] Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Biagi, 6,105,392 in view of Indiveri et al., US-6,305,192.

Biagi teaches of an earring piercing and fastening systems and methods.

However, Biagi fails to disclose expressly of a magnetic component connected via opposite magnetic charges.

Indiveri et al. teaches of an apparatus for increasing piecing safety whereby two components are connected together via the use of magnetic charges (as shown in the connection between 108 and 106 in Fig. 2 of Indiveri et al.)

Art Unit: 3677

At the time of invention, it would have been obvious to one of ordinary skill in the art to modify the earring piercing and fastening system taught by Biagi, to incorporate an possible magnetic component connection as taught by Indiveri et al., in order to as Indiveri states in his abstract that, "magnetic targets permit individuals to easily remove and replace ornamental earring elements without risk of inadvertent or intentional premature removal..." Thus it is easy to discern why such an embodiment of utilizing magnetic components would be desired since it would strongly increase the ease assembly and reuse of the earring and its respective components in the pierced ear.

[10] Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Biagi, 6,105,392 in view of Schinzinger et al. US-4,996,851.

Biagi teaches of an earring piercing and fastening systems and methods.

However, Biagi fails to disclose expressly of its connector segment comprising an adhesive to adhere to the shaft.

Schinzinger et al. teaches of an earring finding including a circular disc (11 in Fig. 1) to which a polygonal pad is adhesively connected (bottom of 12), and the side of the polygonal pad that is not connected to the disc having a layer of adhesive covered with a strippable membrane (top of 12).

At the time of invention, it would have been obvious to one of ordinary skill in the art to modify the earring piercing and fastening system taught by Biagi, to incorporate a possible releasable adhesive connection as taught by Schinzinger et al., in order to as create another embodiment of possible connection between

Art Unit: 3677

pieces revolving around a simplistic method of adhesives. Thus, it is easy to discern why such an embodiment of utilizing adhesives would be desired since it would strongly increase the ease of assembly and reuse of the earring and its respective components in the pierced ear.

[11] Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Biagi, 6,105,392 in view of Float et al., 5,893,278.

Biagi teaches of an earring piercing and fastening systems and methods.

However, Biagi fails to disclose expressly of structure of a component comprising a flexible component able to expand and retract to receive another component such as a connector.

Float et al. teaches of an earring having an improved retaining mechanism (10 in Fig. 1) in which the assembly has the ability to expand and retract around a stem of an earring (12) to improve the characteristic locking, fastening or retaining ability of the earring (40 into 20 onto stem 12 in Fig. 1 of Float et al.).

At the time of invention, it would have been obvious to one of ordinary skill in the art to modify the earring piercing and fastening system taught by Biagi, to incorporate a possible retaining mechanism as taught by Float et al., in order to as create another embodiment of connection between pieces revolving around a retaining mechanism. Thus, it is easy to discern why such an embodiment of utilizing an expanding and retracting design would be desired since it would strongly increase the ease of assembly and to deter possible inadvertent disengagement between two components in the pierced ear.

Conclusion

[12] The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited further to show the state of the art with respect to this particular type of assembly; as well as their extreme relevance to the current application: Dempsey, 5,638,701; Hofssaess, 4,052,864; Salerno, 5,203,183; Hollingworth, 6,138,333; Skalet, 5,375,433; Thomas, 5,411,516; Quattlebaum, 5,491,985; Inoue, 5,632,163; Biagi, 5,893,277; Schehr, 6,079,224.


[13] Any inquiry concerning this communication or earlier communications from the examiner should be directed to David C. Reese whose telephone number is 703-305-4805. The examiner can normally be reached on 7:30 am - 5:00 pm M-Th, and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J.J. Swann can be reached on (703) 306-4115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3677

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sincerely,
David Reese
Examiner
Art Unit 3677


Primary JACK LAVINDER
JULY 2007 PATENT EXAMINER
TECHNOLOGY CENTER 3600